

MICHIGAN ELECTION LAW (EXCERPT)
Act 116 of 1954

COUNTY, CITY, TOWNSHIP AND VILLAGE BOARDS OF CANVASSERS

168.861 Fraudulent or illegal voting, or tampering with ballots or ballot boxes; remedy by quo warranto.

Sec. 861. For fraudulent or illegal voting, or tampering with the ballots or ballot boxes before a recount by the board of county canvassers, the remedy by quo warranto shall remain in full force, together with any other remedies now existing.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 38, Imd. Eff. Dec. 27, 1963.

Popular name: Election Code

168.862 Fraud or mistake in canvass or returns of votes; recount petition by candidate.

Sec. 862. A candidate for office who believes he or she is aggrieved on account of fraud or mistake in the canvass or returns of the votes by the election inspectors may petition for a recount of the votes cast for that office in any precinct or precincts as provided in this chapter.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1958, Act 192, Eff. Sept. 13, 1958;—Am. 1976, Act 141, Imd. Eff. June 2, 1976;—Am. 2003, Act 302, Eff. Jan. 1, 2005.

Popular name: Election Code

168.863 Fraud or error as to proposed charter amendment or other ballot question; recount petition by elector.

Sec. 863. A qualified and registered elector voting in a city, township, or village election who believes there has been fraud or error committed by the inspectors of election in its canvass or returns of the votes cast at the election, upon a proposed amendment to the charter of the city or village or other ballot question submitted to the voters of the county, city, township, school district, community college district, or village, may petition for a recount of the votes cast in any precinct or precincts of that county, city, township, school district, community college district, or village, upon that proposed amendment or other ballot question as provided in this chapter.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1976, Act 141, Imd. Eff. June 2, 1976;—Am. 2003, Act 302, Eff. Jan. 1, 2005.

Popular name: Election Code

168.864 Repealed. 1996, Act 261, Eff. Mar. 28, 1996.

Compiler's note: The repealed section pertained to conducting recount in primary election.

Popular name: Election Code

168.865 Recount petition; contents.

Sec. 865. Such petition shall be sworn to and shall set forth as near as may be the nature of the mistakes or frauds complained of and the city, ward, township, village and precinct in which they are alleged to have occurred, and shall ask for a correction thereof.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.866 Recount petition; filing, deadline; copy, filing.

Sec. 866. Such petitions for recount, be such for an office or proposition, other than those filed with the state board of canvassers, shall be filed with the clerk of the board of canvassers, which board originally conducted the canvass. In all cases, such petitions shall be filed within 6 days after the original canvass has been completed by the county, city, township, village or district board of canvassers. A copy of any such petition shall also be filed with the secretary of state within 2 days after the time the original petition is filed with the board of county canvassers as provided in this section. In case the office or proposition in question be a city, ward, township, village or district office or proposition, a copy of such petition shall not be filed with the secretary of state, but a copy shall be transmitted within 24 hours to the clerk of the board of county canvassers by the appropriate local clerk if the recount fee has been paid.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 38, Imd. Eff. Dec. 27, 1963.

Popular name: Election Code

168.867 Recount petition; deposit; refund; disposition of sum deposited.

Sec. 867. The candidate or elector filing a recount petition with the clerk of the correct board of canvassers

shall at the same time deposit with the clerk the sum of \$10.00 for each precinct referred to in his or her petition. If, by reason of the recount, the petitioner establishes sufficient fraud or mistake as set forth in his or her petition to change the result of the election and receives a certificate of election or establishes sufficient fraud or mistake to change the result, upon an amendment or proposition, the votes for and against, which were recounted, the money deposited by the petitioner shall be refunded. If the petitioner does not establish a fraud or mistake as set forth in his or her petition, the sum deposited shall be paid by the clerk of the board of county, city, township, or village canvassers to the treasurer of the county, city, township, or village.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1980, Act 200, Imd. Eff. July 18, 1980.

Popular name: Election Code

168.868 Recount petition; notice to opposing candidates; counter petition; objections to recount petition; hearing; ruling; failure to give notice to opposing candidate.

Sec. 868. (1) If a candidate has filed a recount petition and made the deposit under sections 862 and 866, the clerk of the board of canvassers shall give notice of the recount petition to the opposing candidates described in this subsection within 24 hours after filing of the petition by delivering to each candidate a copy of the recount petition, or, if the candidate cannot be found, by leaving a copy at the candidate's last known place of residence with a member of the candidate's immediate family of suitable age. If a member of the candidate's family cannot be found, the clerk of the board of canvassers may give notice by posting the recount petition in a conspicuous place at the candidate's last known place of residence. The clerk of the board of canvassers is not required to give notice to candidates other than the 2 candidates who, according to the return of the board of canvassers, received the lowest number of votes among those candidates who were nominated or elected, and the 2 candidates who, according to the return of the board of canvassers, received the highest number of votes among those candidates who were not nominated or elected.

(2) A candidate may file a counter petition in the same manner as the original petition under section 866 within 48 hours after the original recount petition was filed with the board of canvassers. At the time of filing the counter petition, the counter petitioner shall deposit the sum of money as required in section 866 for the original petitioner. The clerk of the board of canvassers shall refund to the counter petitioner the money deposited by the counter petitioner if the original petitioner does not establish fraud or receive a certificate of election. Except as otherwise provided in this subsection, the counter petitioner shall file a copy of the counter petition with the secretary of state within 4 days after the time the original petition is filed with the proper board of canvassers as provided in this section. If the office or ballot question in question is a city, township, ward, village, or district office or ballot question, the counter petitioner is not required to file a copy of the counter petition with the secretary of state.

(3) On or before 4 p.m. of the seventh day after a recount petition has been filed under section 866, an opposing candidate may file objections to the recount petition with the appropriate board of canvassers. The opposing candidate shall set forth his or her objections to the recount petition in writing. Upon receipt of an objection under this subsection, the board of canvassers shall notify the petitioner and the objecting candidate of the date of the hearing of the board of canvassers to consider the objections. The board of canvassers shall allow the recount petitioner and the objecting candidate to present oral or written, or both, arguments on the objections raised to the recount petition at the hearing. Not later than 5 business days following the hearing, the board of canvassers shall rule on the objections raised to the recount petition. The board of canvassers shall not begin a recount unless 2 or more business days have elapsed since the board ruled on the objections under this subsection, if applicable.

(4) If the time designated for filing a petition under this section falls on a Saturday, Sunday, or legal holiday, the petition may be filed on the next succeeding business day. Failure of the clerk of the board of canvassers or the secretary of state to give notice to the opposing candidate as required in this section shall not affect the results of the recount.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1955, Act 271, Imd. Eff. June 30, 1955;—Am. 1959, Act 24, Eff. Mar. 19, 1960;—Am. 1963, 2nd Ex. Sess., Act 38, Imd. Eff. Dec. 27, 1963;—Am. 1969, Act 188, Imd. Eff. Aug. 5, 1969;—Am. 1995, Act 261, Eff. Mar. 28, 1996.

Popular name: Election Code

168.869 Recount petition; investigation, delay; expenses of local recount.

Sec. 869. Upon the filing of a petition for recount, and the giving of notice, if notice is required to be given, the board of county canvassers shall be summoned by the clerk of the board and here make an investigation of the facts set forth in the petition. Should the recount involve a county or district office or proposition, the recount shall not be commenced until the board shall determine by communicating with the secretary of state that no petition has been filed requesting a recount by the board of state canvassers of ballots

cast in the same district. In case said board shall be advised by the secretary of state that a petition has been filed with him praying for a recount by the board of state canvassers of the ballots cast in the same county or district, then no action shall be taken upon the recount until the county board shall receive instructions from the board of state canvassers. Nothing herein contained shall act to delay any recount of the ballots cast at any city, ward, township or village election if the ballots cast at such election are not sealed in the same ballot boxes with the state and county offices. With respect to any recount of ballots cast in any city, ward, township, village, school or district election, the board of county canvassers shall charge the appropriate local unit the actual and necessary expenses of conducting the recount, and the local unit shall pay such charges to the county treasurer.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 38, Imd. Eff. Dec. 27, 1963.

Popular name: Election Code

168.870 Board of canvassers; investigation of recount.

Sec. 870. For the purpose of such investigation, the clerk, if no meeting be already appointed, shall call a meeting of such board of canvassers and the said board shall have power to issue subpoenas requiring the person in charge thereof to bring before it the ballot boxes used in the election precinct or precincts referred to in the petition, as well as the poll lists, tally sheets, statements of returns and such other documents or reports as may be deemed necessary. Said board shall safely guard such ballots, poll lists, tally sheets and returns and when no longer required shall deliver them to the officials charged with the custody thereof. Whoever, being so subpoenaed, shall fail to appear or shall fail to produce any such box, shall be deemed guilty of a misdemeanor. The persons who are required to appear before the board of canvassers shall be paid the same fees and mileage as are paid circuit court witnesses in the county. They shall be paid by the political subdivision before whose board of canvassers they appear.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.871 Recount; counting of paper ballots; use of electronic voting system; use of voting machines; recount of absent voter ballots; ballots ineligible for recount; procedures for conduct of recount; use of computer; testing software application.

Sec. 871. (1) In a precinct using paper ballots, the board of canvassers conducting a recount pursuant to this chapter shall conduct the recount, subject to all of the following:

(a) The ballots in packages or ballot bags that are secured and sealed so that a ballot cannot be removed or inserted unless the ballot corresponds in number with the poll list delivered to the appropriate clerk by the board of election inspectors, shall be recounted even though the ballot box or other ballot container is not securely sealed with the seal of record.

(b) If the ballot box or other ballot container is securely sealed with the seal of record, only the ballots that correspond in number with the poll list delivered to the appropriate clerk by the board of election inspectors shall be recounted even though the ballots are not secured and sealed in packages or ballot bags.

(c) If the ballot box or other ballot container is not securely sealed or if the seal on the ballot box or other ballot container is not the seal of record and the ballots in packages or ballot bags are not secured and sealed so that a ballot cannot be removed or inserted, the ballots shall not be recounted and the original count of the ballots as reported by the board of election inspectors shall stand as the correct count.

(d) If the number of ballots in a secured and sealed package or bag and the number of ballots issued on election day as shown on the poll list do not match and the difference is not explained to the satisfaction of the board of canvassers, the ballots shall not be recounted and the original count of the ballots as reported by the board of election inspectors shall stand as the correct count.

(2) Except as otherwise provided in this section, the board of canvassers conducting a recount pursuant to this chapter shall recount all ballots of a precinct using an electronic voting system unless 1 or more of the following circumstances exist:

(a) The seal on the transfer case or other ballot container is broken or bears a different number than that recorded on the poll book, the breaking or discrepancy is not explained to the satisfaction of the board of canvassers, and security of the ballots has not been otherwise preserved.

(b) The number of ballots to be recounted and the number of ballots issued on election day as shown on the poll list or the computer printout do not match and the difference is not explained to the satisfaction of the board of canvassers.

(c) The seal used to seal the ballot label assembly to a voting device in the precinct is broken or bears a different number than that recorded in poll records and the ballot labels or rotation of candidates' names is different than that shown by other voting devices in the precinct and records of the board of election

commissioners.

(3) In a precinct in which voting machines are used, the board of canvassers conducting a recount pursuant to this chapter shall recount all voting machines used in the precinct unless 1 or more of the following circumstances exist:

(a) All voting machines used in a precinct shall not be recounted if the sum of the numbers appearing on the public counters of all voting machines used in the precinct exceeds the total number of voters who voted in the precinct as shown by the poll book, plus the number of times the machine was operated by the inspectors of election and custodians, as shown by the record of the board of election inspectors, and the excess is not explained to the satisfaction of the board of canvassers by the inspectors of election of that precinct.

(b) A voting machine used in a precinct shall not be recounted if the voting machine is not sealed with the seal of record in such a manner as to render it impossible to vote on the machine or to otherwise change the totals appearing on the individual candidate or ballot question counters.

(c) A voting machine used in a precinct shall not be recounted if the number appearing on the protective counter of the voting machine at the time of the recount does not equal the sum of the number appearing on the protective counter at the opening of the polls as shown by the certificate of the board of election inspectors and the number appearing on the public counter at the time of the recount.

(4) In a precinct in which voting machines are used, which precinct cannot be recounted under subsection (3), absent voter ballots tallied in that precinct shall not be recounted unless recorded separately. This section does not prohibit the recounting of absent voter ballots tallied in a precinct using an absent voter counting board or in a precinct in which 1 or more voting machines are recountable, if the absent voter ballots are securely packaged and sealed.

(5) If a board of canvassers conducting a recount pursuant to this chapter determines that the ballots of a precinct are not eligible for recount under this section, the original return of the votes for that precinct shall be taken as correct.

(6) A board of canvassers conducting a recount pursuant to this chapter may conduct a recount by the following means:

(a) A manual tally of the ballots.

(b) A tabulation of the ballots on a computer using a software application designed to specifically count only the office or ballot question subject to the recount.

(c) A tabulation of the ballots on a computer using the same software application used in the precinct on election day.

(d) Any combination of methods in subdivision (a), (b), or (c), as determined appropriate by the board of canvassers.

(7) If a board of canvassers conducting a recount pursuant to this chapter intends to conduct a recount on a computer, the board of canvassers shall first test the software application by use of a test deck to determine if the program accurately counts the votes for the office or ballot question subject to the recount. If the test under this subsection fails to show that the software application accurately counts the votes for the office or ballot question subject to the recount, the board of canvassers shall use another means prescribed in subsection (6) to conduct the recount.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1965, Act 96, Imd. Eff. June 28, 1965;—Am. 1995, Act 261, Eff. Mar. 28, 1996;—Am. 1996, Act 583, Eff. Mar. 31, 1997;—Am. 2000, Act 207, Imd. Eff. June 27, 2000.

Popular name: Election Code

168.871a Challenge raised by candidate or elector; resolution; petition disagreeing with resolution; notice; hearing; ruling.

Sec. 871a. If a proper challenge is raised by a candidate or an elector interested in a ballot question during a recount being conducted by the board of state canvassers, a member of the board of state canvassers or other representative designated by the board of state canvassers under section 890 shall resolve that challenge before the recount is completed in that county. A candidate or elector interested in a ballot question who is involved in the recount and who disagrees with the resolution of the challenge may petition the state board of canvassers for a de novo review of the challenge. The candidate or elector shall file a petition disagreeing with the resolution of a challenge not later than 5 business days after the board of state canvassers mails notice that the recount has been completed to the candidates or electors. Upon receipt of a petition disagreeing with the resolution of a challenge under this section, the board of state canvassers shall notify all candidates and electors involved in the recount of the date of the hearing of the board of state canvassers to consider the petition. The board of state canvassers shall allow the candidates and electors involved in the recount to present oral or written, or both, arguments on the challenge at the hearing. The board of state canvassers shall

rule on the challenge at that meeting.

History: Add. 1995, Act 261, Eff. Mar. 28, 1996.

Popular name: Election Code

168.872 Board of canvassers; investigation, report to prosecutor and circuit judge.

Sec. 872. Whenever a petition has been filed for a recount by any person conceiving himself aggrieved on account of any fraud, wrongdoing or violation of the law perpetrated or committed by any election inspector or inspectors or any other person in respect to said election for which said recount has been petitioned, in any primary or election, and it shall appear to the board of canvassers having jurisdiction over said recount that there is probably cause to believe that there has been fraud, wrongdoing or a violation of the law in respect to said election for which said recount has been petitioned, the said canvassers shall make full and complete investigation of the same. Said canvassers shall have full power and authority to subpoena witnesses and to open any ballot box, regardless of the condition in which the same may be found, and may break open, if sealed, the seal thereon and examine the ballots contained therein. If, after the investigation, said board has good reason to believe that any fraud, wrongdoing or a violation of the law has been committed in respect to said election, then said board of canvassers shall forthwith make a written report of their findings to the prosecuting attorney and to the circuit judge or judges of the county where the petitioner resides if it be a county, city, township or village election, and to the attorney general and to the circuit judge of the county of Ingham if it be a district or state election. Said reports shall be signed by each of the canvassers having jurisdiction of said recount, or a majority thereof. Pending the making of such report, the board of canvassers having jurisdiction of such recount shall carefully preserve and safeguard the ballot boxes and the ballots contained therein until an order of the court, to which said report was submitted, is made authorizing the disposition of the same. Any action taken in such investigation shall not preclude any official recount of the ballots cast at any such election, if otherwise allowed by the general election laws. The powers of investigation referred to in this section shall terminate with the completion of the recount.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1965, Act 82, Imd. Eff. June 24, 1965.

Popular name: Election Code

168.873 Recount; misconduct of employees, felony.

Sec. 873. Any officer, assistant, clerk or employee engaged in the conduct of a recount who shall wilfully commit any act which shall interfere with a fair and impartial recount of the votes cast for a contested office, amendment or proposition shall be deemed guilty of a felony and subject to the penalties thereof.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.874 Recount; return of ballots; manner of counting votes.

Sec. 874. (1) Pursuant to this chapter, the board of canvassers conducting the recount shall reject all previous returns from the precincts, townships, or wards, except the returns from a precinct that cannot be recounted as to that candidate or ballot question pursuant to section 871. In a public place where the candidates or persons interested in the ballot question and their counsel may be present, if they so desire, the board of canvassers shall proceed in the manner prescribed in section 871. If applicable, the board of canvassers shall open the ballot boxes from the precincts, townships, or wards, and the rolls or packages of ballots in the ballot boxes, and to make a recount of the ballots as to the candidates or ballot question. Upon completion of the recount, the board of canvassers shall make a full, complete, and correct return in writing, showing the full number of votes given to each candidate, or the total number of votes cast for and against any ballot question, written out in words and figures.

(2) The board of canvassers shall conduct the recount so that the complete procedure may be observed and noted by the candidates or persons interested in the ballot question, their counsel, and not to exceed 1 watcher and 1 tallier at each table to check the work of the recount clerks. The secretary of state shall develop instructions consistent with this act for conducting a recount pursuant to this subsection. All votes cast, whether for candidates or ballot questions, shall be recounted in the following manner:

(a) The ballots from any given precinct shall first be counted and the total compared with the number of ballots issued on election day as shown on the poll list. If the first count of the number of ballots and the number of ballots issued on election day as shown on the poll list do not match, the ballots from that precinct shall be counted a second time and the total compared with the number of ballots issued on election day as shown on the poll list. If the second count of the number of ballots and the number of ballots issued on election day as shown on the poll list do not match, those ballots shall not be recounted as provided in section 871. If the second count of the number of ballots and the number of ballots issued on election day as shown

on the poll list match, the ballots from that precinct shall be counted a third time and the total compared with the number of ballots issued on election day as shown on the poll list. If the third count of the number of ballots and the number of ballots issued on election day as shown on the poll list do not match, those ballots shall not be recounted as provided in section 871.

(b) If the first count described in subdivision (a) or the second and third counts described in subdivision (a) match the number of ballots issued on election day, the ballots shall be placed face up on the table and 1 recount clerk shall call the votes for each candidate or ballot question involved in the recount.

(c) Two tally clerks shall simultaneously record the called votes on forms provided for that purpose.

(3) The candidates or persons interested in the ballot question, their counsel, watchers, and talliers shall be allowed to observe each ballot as it is called and to take notes as they desire for their own records. The board of canvassers shall identify by an exhibit number a ballot counted or rejected under protest, keep a record of the protest, and proceed as required under section 871a.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1995, Act 261, Eff. Mar. 28, 1996.

Popular name: Election Code

168.875 Recount; completion.

Sec. 875. All recounts shall be completed for a primary election not later than the twentieth day and for any other election not later than the thirtieth day immediately following the last day for filing counter petitions or the first day that recounts may lawfully begin. As soon as the recount is completed, the board shall return any ballots to their respective containers and seal the containers. The board shall then return the ballots, voting devices, machines, any related keys, and seals to the officer or officers having the care and custody of those items.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1965, Act 82, Imd. Eff. June 24, 1965;—Am. 1995, Act 261, Eff. Mar. 28, 1996.

Popular name: Election Code

168.876 Recount; returns by board of canvassers, withdrawal of petition; final report open to public inspection.

Sec. 876. The returns made by the said board of canvassers upon recount shall be deemed to be correct, anything in the previous returns from such city, township, ward or precinct to the contrary Notwithstanding: Provided, however, That if the person petitioning for such recount shall withdraw his petition or discontinue the recount before the completion thereof, then in such event the original return shall be deemed to be correct regardless of any change shown by the recount at the time of the withdrawal of the petition or the discontinuance of such recount: Provided further, That the final report on the results of any recount shall be open to public inspection immediately following its certification by the board of canvassers.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.877 Review of apparent error by certiorari.

Sec. 877. Any candidate for a county, city, ward, township or village office not receiving a certificate of election, or any qualified and registered elector voting at the last preceding election when any amendment or proposition has been voted on, may, for error apparent upon the face of the returns, have the same examined and corrected upon certiorari to the circuit court of the county, according to the rules and practices applicable to such writs.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code